

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

TENTH STREET BUILDING)	
CORPORATION,)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 03-359 Erie
)	
BP PRODUCTS NORTH AMERICA)	
INC., f/k/a and successor to BP OIL)	JUDGE COHILL
COMPANY, f/k/a and successor to)	
BORON OIL COMPANY, and)	
DONALD)	
TRAPP,)	
Defendants)	

MOTION FOR DISMISSAL

Defendant, Donald Trapp, by his attorney, Thomas A. Testi, Esquire, hereby files this Motion for Dismissal of the Civil Action filed at No. 03-359 Erie against said Defendant, Donald Trapp, for the reasons set forth hereafter:

1. As this Honorable Court is well aware, pursuant to the terms of the Court's February 28, 2005 Order, this case should be dismissed.

2. As the Court is aware, the "parties" to this case are Tenth Street Building Corporation, BP Products North America, Inc., f/k/a and successor to BP Oil Company, f/k/a and successor to Boron Oil Company, and Donald Trapp.

3. The Court's Order dated September 1, 2005 stated that any party wishing to lift the stay could do so by setting forth their reasons in a motion to lift the stay filed with the Court no later than September 9, 2005, or, in the alternative, that the parties shall, prior to September 9, 2005, file a stipulation for dismissal of the action, and, that if the parties do not move to lift the stay or file a stipulation for dismissal by September 9, 2005, that the action would be dismissed.

4. Prior to February 28, 2005 and subsequent to February 28, 2005, Defendant Donald Trapp has made numerous requests for settlement discussions with Plaintiff and has extended Plaintiff all of the records and information available and known to Defendant Donald Trapp that are deemed material to this case.

5. Prior to February 28, 2005, and subsequent to February 28, 2005, Defendant Donald Trapp has received absolutely no settlement inquiries or communications nor have any of Defendant Donald Trapp's prior requests for settlement discussion been answered by Plaintiff.

6. The Defendant, Donald Trapp, has not been invited to join nor has he joined in any motion to lift the stay of proceedings.

7. Defendant Donald Trapp hereby asks that this honorable Court to "not" lift the stay of proceedings ordered and imposed by the Court in the Court's Order of February 28, 2005 and asks that this case be dismissed at this time.